

Internal Revenue Service

Number: **201702035**

Release Date: 1/13/2017

Index Number: 197.00-00, 267.00-00,
267.07-00, 267.07-02,
338.00-00, 338.02-00,
338.09-00, 338.80-00,
355.00-00, 355.01-00,
355.03-00, 361.00-00,
368.00-00, 368.04-00,
1502.13-00

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:CORP:2
PLR-126074-15

Date:
February 01, 2016

Legend

Distributing =

Controlled =

Newco =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

Sub 6 =

State A =

State B =

State C =

Business A =

Business B =

Business C =

a =

b =

c =

d =

e =

f =

g =

h =

i =

i =

k =

l =

Date 1 =

Date 2 =

Date 3 =

A Services =

B Properties =

C Property =

Dear

This letter responds to your letter dated July 31, 2015, as supplemented by subsequent submissions, requesting rulings under Sections 355, 368, 197, 267, 332, 338, and 1239 of the Internal Revenue Code (the "Code") and related provisions with respect to a proposed series of transactions described below (the Proposed Transactions, as defined herein). The information submitted is summarized below.

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

This letter is issued pursuant to section 6.03 of Rev. Proc. 2015-1, 2015-1 I.R.B. 19, regarding one or more significant issues under sections 332, 355, and 368. The rulings contained in this letter only address one or more discrete legal issues involved in the transaction. This Office expresses no opinion as to the overall tax consequences of the transactions described in this letter or as to any issue not specifically addressed by the rulings below.

Summary of Facts

Distributing is a State A corporation, the stock of which is publicly traded and widely held. Distributing is the parent of a group of direct and indirect subsidiaries and related entities (the “Distributing Group”). It also is the common parent of an affiliated group of corporations that files a consolidated U.S. federal income tax return (the “Distributing Consolidated Group”). The Distributing Group conducts Business A, Business B (together, the “Retained Businesses”), and Business C. Distributing directly holds certain assets associated with Business C (the “Distributing Business C Assets”).

Distributing owns 100 percent of the stock of Sub 1, a State B limited liability company (“LLC”) classified as a corporation for U.S. federal income tax purposes. Sub 1 conducts Business C directly and through a number of wholly owned domestic corporations (each a “Sub 1 Subsidiary” and, collectively, the “Sub 1 Subsidiaries”) and domestic or foreign disregarded entities.

Distributing also owns 100 percent of the stock of Sub 2, a State B corporation that conducts, directly and through subsidiaries, portions of Business A and Business B. Sub 2 also owns certain assets associated with Business A, Business B, and Business C. Sub 2 owns all the stock of Sub 3, a State B corporation that owns an asset associated with Business C leased to a third party (the “Sub 3 Asset”).

Sub 2 previously owned all the stock of Sub 4, a State A corporation that served as a holding company. Sub 4, in turn, owned all the stock of Sub 5, a State A corporation that owned certain assets associated with Business A, Business B, and Business C. On Date 1, Sub 4 merged into Sub 2, and, on Date 2, Sub 5 merged into Sub 2. The assets associated with Business C held by Sub 2 include, among other things, leases with third parties for certain properties.

Distributing indirectly owns all the stock of Sub 6, a State C corporation that holds, among other assets, an asset associated with Business C (the “Sub 6 Asset”).

Current or former non-management members of Distributing’s board of directors (the “Distributing Board”) annually receive, have in the past received, or are (or have in the past been) entitled to elect to receive, a portion of their fees earned for board service in the form of deferred shares of Distributing stock. Such deferred shares are fully vested and, in order to defease Distributing’s future payment obligation in respect of the deferred shares, shares of Distributing stock are transferred by Distributing to a rabbi trust (the “Rabbi Trust”). As grantor of the Rabbi Trust, Distributing is the owner of such shares for U.S. federal income tax purposes. The deferred compensation plan allows participants to elect to receive payment in the form of a single lump sum or up to a annual installments, with payment made or commencing on a specified date or upon separation from service with Distributing, as elected by the participant. Distributing’s Rabbi Trust holds approximately b million shares of Distributing stock out of a total of approximately c million shares outstanding, or less than d% of the outstanding shares.

Employees and current and former non-employee directors of Distributing hold three types of equity-based compensation interests pursuant to Distributing's equity incentive plans: Distributing Stock Options (as defined below), Distributing Restricted Stock (as defined below), and Distributing RSUs (as defined below) (collectively, the "Distributing Equity Incentive Interests"). On a fully diluted basis, the Distributing Equity Incentive Interests constitute, in aggregate, approximately e percent of Distributing's equity interests.

Stock options are granted to key salaried employees and have been granted to Distributing's non-employee directors to purchase common stock at an exercise price not less than f percent of the fair market value of Distributing's common stock on the date of the grant ("Distributing Stock Options"). Distributing Stock Options vest over a g to h year period, and have a term of from i to j years. Distributing restricted stock ("Distributing Restricted Stock") is also awarded to key salaried employees, and restricted stock units and deferred stock (collectively, the "Distributing RSUs") are awarded to key salaried employees and non-employee directors (as described above), respectively. The vesting of Distributing Restricted Stock and Distributing RSUs (other than non-employee director deferred stock described above) is determined at the discretion of Distributing's Board of Directors (or the Compensation Committee thereof), but such awards generally vest between d and k years from the date of grant. Distributing Restricted Stock constitutes a de minimis portion of Distributing's outstanding stock for state law purposes (other than treasury stock).

Business Purpose

Distributing proposes to separate Business C from the Retained Businesses through the distribution of stock of a newly-formed corporation owning Business C (the "Distribution"). The separation of Business C is being effected for compelling corporate business reasons. In particular, the separation will: (i) resolve customer-competitor conflicts between Business C and Business A; (ii) sharpen strategic and management focus; (iii) reduce internal competition for capital; (iv) improve the businesses' ability to use stock as acquisition currency; and (v) improve the ability to attract, retain, and incentivize employees.

The Proposed Transactions

Distributing proposes to undertake, pursuant to one overall plan, the following transaction steps (the "Proposed Transactions"):

1. On Date 3, Distributing formed a new U.S. corporation ("Controlled"). Controlled has a single class of stock outstanding, its common stock.
2. Distributing will form Newco, a new wholly owned U.S. corporation.

3. Prior to Step 7, Distributing will enter into a binding commitment with one or more third parties to sell to such third party (or parties) all of the Newco nonvoting preferred stock (the "Newco Preferred") that Distributing will receive pursuant to Step 7. The exact terms of the Newco Preferred have not been established as yet. However, the Newco Preferred is expected to (i) have a liquidation preference of at least \$1 million, (ii) be callable by Newco at any time on or after the fifth anniversary of its issuance for an amount equal to its liquidation preference plus any accrued and unpaid dividends, (iii) entitle the holder(s) to require that Newco redeem the Newco Preferred (a) possibly as early as the fifth anniversary of its issuance for an amount equal to its liquidation preference plus any accrued and unpaid dividends and (b) possibly upon an earlier change in control of Newco or Controlled for an amount equal to 101 percent of the liquidation preference plus any accrued and unpaid dividends, (iv) not be convertible, (v) pay quarterly or annual cash dividends at the prevailing rate, and (vi) not have creditor's rights.
4. Sub 1 and each of the Sub 1 Subsidiaries that will distribute assets in Step 5 will adopt resolutions to the effect that the distribution will be undertaken in connection with the Section 338(h)(10) election described in Step 7.
5. Sub 1 and each of the Sub 1 Subsidiaries that have (i) machinery and equipment or (ii) certain other specified intangibles related to Business C will distribute some or all of such assets up the ownership chain to Distributing (the "Sub 1 Distributed Assets"). In connection with such distributions, the Sub 1 Distributed Assets may be contributed to disregarded entities and a reference to the Sub 1 Distributed Assets includes, as the context may require, a reference to such disregarded entities. The Sub 1 Distributed Assets will be leased or licensed to Sub 1 and/or the Sub 1 Subsidiaries.
6.
 - a. Sub 3 will merge into Sub 2, and Sub 2 will distribute the Sub 3 Asset to Distributing (or assign such asset to a disregarded entity owned by Distributing). Alternatively, if legal restrictions effectively preclude Controlled or a direct or indirect subsidiary thereof from owning the Sub 3 Asset and leasing it to a licensee of Business C, Step 6a will not occur, and Sub 3 will retain the Sub 3 Asset and may continue to lease it to the third party licensee of Business C following the Distribution.
 - b. Following the mergers of Sub 4 into Sub 2 on Date 1, Sub 5 into Sub 2 on Date 2, and Sub 3 into Sub 2 in Step 6a (if such step occurs), Sub 2 will distribute any Business C assets previously held by Sub 5 or Sub 3 (if applicable) and any Business C assets historically owned by Sub 2 (collectively, the "Sub 2 Assets") to Distributing (or assign such assets directly to a disregarded entity owned by Distributing).

- c. Sub 6 will sell the Sub 6 Asset to Distributing (or a disregarded entity owned by Distributing) in exchange for a note from Distributing equal to the fair market value of the property transferred. Alternatively, Step 6c may be accomplished through a distribution of the Sub 6 Asset (or the interests in a disregarded entity holding such asset) to Distributing up the chain of corporations through which Distributing indirectly owns Sub 6.
7. Distributing will transfer 100 percent of the stock of Sub 1 to Newco in exchange for shares of Newco common stock (the "Newco Common") and Newco Preferred (and potentially cash) (the "Sub 1 Purchase"). Distributing and Newco will jointly elect under Section 338(h)(10) (the "Section 338(h)(10) Election") to treat the transaction as (i) a sale of "old" Sub 1's assets to "new" Sub 1, and (ii) the distribution of the proceeds thereof, together with the assets distributed in Step 5, in complete liquidation of "old" Sub 1. The election will be tiered down to the Sub 1 Subsidiaries.
8. Pursuant to a binding commitment entered into in Step 3, Distributing will sell all of the Newco Preferred to an unrelated third party (or parties) for cash (the "Preferred Sale").
9. a. Distributing will transfer (a) the Sub 1 Distributed Assets (subject to the leases and licenses entered into in Step 5), the Sub 2 Assets (including, if applicable, the Sub 3 Asset subject to the associated lease), the Sub 6 Asset, and the Distributing Business C Assets (or one or more disregarded entities owning such assets) and (b) the Newco Common to Controlled in exchange for: (i) Controlled common stock; (ii) the assumption of certain liabilities associated with Business C; and (iii) potentially a portion of the Controlled Borrowing Proceeds (defined below in Step 10) (the "Cash Proceeds"; such transfer, the "Contribution"). Some or all of the additional Controlled common stock may be issued at the time of the Contribution or in a recapitalization to occur close in time to the Distribution.
- b. During the 18-month period following the Distribution, Distributing will use an amount of cash equal to, or greater than, the Cash Proceeds (a) to make distributions to its shareholders in the form of distributions with respect to stock (whether made in the ordinary course or otherwise) or share repurchases (whether pursuant to an existing or new share repurchase program); (b) to pay its liabilities whenever incurred (which could include ordinary course liabilities and principal, interest, and associated consent and other fees on bank debt, bonds, and other borrowings); or (c) a combination thereof. Distributing anticipates that, pending the distribution of an amount of cash equal to the Cash Proceeds to shareholders and/or creditors, the Cash Proceeds will be invested and/or otherwise used. Distributing will not set aside or otherwise segregate the Cash Proceeds.

10. Controlled will borrow funds from third party lenders ("Controlled Borrowing Proceeds"). Some or all of the Controlled Borrowing Proceeds will be transferred to Distributing pursuant to Step 9a (i.e. the Cash Proceeds). Alternatively, Sub 1 may borrow funds and distribute such funds to Distributing prior to Step 7.
11. Distributing will distribute an amount of Controlled common stock constituting at least 80 percent of outstanding Controlled common stock (i.e., the Distribution). No fractional shares of Controlled stock will be distributed in the Distribution. Instead, all fractional shares of Controlled stock that Distributing shareholders otherwise would be entitled to receive will be aggregated by a distribution agent and, as soon as practicable following the effective time of the Distribution, will be sold at the prevailing price. Any Distributing shareholder entitled to receive a fractional share of Controlled stock will be entitled to receive a cash payment in an amount equal to the shareholder's proportionate interest in the net proceeds from the open market sale. As a shareholder of Distributing, the Rabbi Trust may receive shares of Controlled stock in the Distribution (the "Rabbi Trust Retained Controlled Stock," and the receipt of such stock by the Rabbi Trust, the "Rabbi Trust Retention"). Distributing also anticipates that, following the Distribution, it will retain additional shares of Controlled common stock (the "Additional Retained Controlled Stock," and the retention of such stock, the "Additional Retention"). The Rabbi Trust will dispose of the Rabbi Trust Retained Controlled Stock as described in Representation (aa), and Distributing will dispose of the Additional Retained Controlled Stock as described in Representation (ff).

The detailed parameters of the equity incentive plans that Controlled will have after the Distribution and the precise treatment of the existing Distributing Equity Incentive Interests in the Distribution have not yet been determined. It is anticipated that Controlled will implement equity incentive plans similar to Distributing's equity incentive plans and, following the Distribution, will make new equity incentive awards to Controlled employees, non-employee directors, or independent contractors. It is also anticipated that (i) some Distributing Stock Options and Distributing RSUs will be converted into Controlled's stock options ("Controlled Stock Options") and restricted stock units or deferred stock (collectively, "Controlled RSUs"), and (ii) some holders of Distributing Restricted Stock on the record date of the Distribution will receive Controlled stock in or in connection with the Distribution, which Controlled stock will be subject to similar risks of forfeiture ("Controlled Restricted Stock"). Immediately after the Distribution, some Controlled employees and/or non-employee directors will, and some Distributing employees and/or non-employee directors may, hold Controlled Stock Options, Controlled Restricted Stock, or Controlled RSUs (collectively, the "Controlled Equity Incentive Interests"). Conversely, some Controlled employees and/or non-employee directors may continue to hold Distributing Equity Incentive Interests. The terms of the Distributing Equity Incentive Interests will be adjusted, and the terms of the Controlled Equity Incentive Interests into

which some Distributing Equity Incentive Interests are converted will be set, so as to preserve holders' net economic positions vis-à-vis their interests.

Following the Distribution, the Distributing Group, on the one hand, and Controlled and its direct and indirect subsidiaries and related entities (the "Controlled Group"), on the other hand, will be parties to certain continuing arrangements and relationships (collectively, the "Continuing Arrangements"). The Continuing Arrangements will likely include: (i) a Separation and Distribution Agreement; (ii) a Tax Matters Agreement; (iii) an Employee Matters Agreement; (iv) a Transition Services Agreement; and (v) a Stockholders and Registration Rights Agreement.

The Transition Services Agreement will provide for certain transitional and administrative services to be provided by Distributing to Controlled while Controlled establishes its own administrative support and corporate service arrangements. Under the Transition Services Agreement, Controlled will pay Distributing a fee for certain services on a cost (or cost-plus) basis. These services will be provided for a transitional period not to exceed k or g years, depending on the particular service. After the Distribution, during the initial service period, Distributing and Controlled may agree to extend the term of the agreement, in which case the agreement will be extended at terms to be agreed upon by the parties at the time bargaining at arms' length. It is expected that the services to be provided for a g-year transitional period are certain A Services for which a k-year period would not be practicable.

In addition, as described above, Distributing has identified leases for two B Properties and one C Property related to Business C where a member of the Distributing Group is the lessee and will assign the leaseholds to a member of the Controlled Group. As an assignor, the member of the Distributing Group will likely not be released from its obligations by virtue of the assignment, as it is expected that the member of the Distributing Group will be unable to obtain a consensual release from its obligations under these leases from the third party lessors without incurring unreasonable cost. However, in connection with the Contribution, Controlled or another member of the Controlled Group will agree, as between itself and the assignor member of the Distributing Group, to assume all obligations under the leases and to indemnify the member of the Distributing Group against any liability thereunder. Accordingly, the liability of the member of the Distributing Group under the leases vis-à-vis the third party lessors will likely remain in place after the Distribution, but only until such time as the original leases terminate or, if sooner, the counterparties agree to release the member of the Distributing Group from its obligations. It is not anticipated that the member of the Distributing Group will be required to make payments under the leases following the Distribution, as a member of the Controlled Group is expected to satisfy all of the lessee's obligations on a timely basis. A similar relationship between the Distributing Group and the Controlled Group will likely apply with respect to other contracts or leases assigned by a member of the Distributing Group to a member of the Controlled Group (or guaranteed by a member of the Distributing Group). In their totality, the

assigned (or guaranteed) leases and contracts will be limited in scope and not central to the strategic direction or independent management of Business C.

Representations

Distributing makes the following representations with respect to the Proposed Transactions:

- a) The Distribution would be pursued by Distributing regardless of whether losses in respect of any loss asset held by Sub 1 or any Sub 1 Subsidiary would be recognized by virtue of the Proposed Transactions.
- b) Each of Sub 1 and any Sub 1 Subsidiary would be entitled to recognize its loss with respect to its respective interest in any loss asset held by Sub 1 or the Sub 1 Subsidiary upon a taxable sale of such interest to an unrelated third party.
- c) All of the stock of Sub 1 will be acquired by Newco in a single transfer by Distributing pursuant to the Sub 1 Purchase.
- d) At the time of the Sub 1 Purchase, each of Sub 1 and any Sub 1 Subsidiary will not have outstanding any warrants, options, convertible securities, or any other type of right pursuant to which any person could acquire stock in Sub 1 or the Sub 1 Subsidiary.
- e) The amount of consideration paid for the Sub 1 stock in the Sub 1 Purchase will be approximately equal to the value of the Sub 1 stock acquired.
- f) The fair market value of the assets of each of Sub 1 and any Sub 1 Subsidiary will exceed each such corporation's liabilities at the time of the Sub 1 Purchase and the Distribution.
- g) Distributing will be a member of the selling consolidated group (as defined in Section 338(h)(10)(B)) for the taxable period that includes the Sub 1 Purchase.
- h) For the taxable period that includes the Sub 1 Purchase, each of Sub 1 and any Sub 1 Subsidiary will be a consolidated target within the meaning of Reg. § 1.338(h)(10)-1(b)(1).
- i) Except to the extent provided by Section 351(g) and related provisions of the Code, the Newco Preferred will constitute stock of Newco (and not indebtedness) for U.S. federal income tax purposes.
- j) The terms of the sale agreement, pursuant to which Distributing will sell the Newco Preferred to an unrelated third party (or parties) in the Preferred Sale, will

be determined pursuant to arm's-length negotiations between Distributing, on the one hand, and the unrelated third party (or parties), on the other hand.

- k) The unrelated third party (or parties) that will acquire the Newco Preferred will not be a party whose ownership of Newco shares would be attributed to Distributing pursuant to Section 318.
- l) At the time of the Preferred Sale, there will be no current plan or intention to redeem the Newco Preferred before the first date that the Newco Preferred is callable, or if the Newco Preferred is not callable, before the mandatory redemption date, if any.
- m) Immediately after the Proposed Transactions, Newco will not be attributed any stock held by Distributing under Section 318(a) (without regard to Section 318(a)(4)).
- n) There is no plan or intention for Distributing, Newco, "new" Sub 1, or any "new" Sub 1 Subsidiary to cease to remain in existence as separate corporations for U.S. federal income tax purposes.
- o) There is no plan or intention on the part of Newco to sell or otherwise dispose of any of the stock of Sub 1 acquired in the Sub 1 Purchase.
- p) Distributing and Newco (and any of its direct or indirect subsidiaries, including "new" Sub 1, and any "new" Sub 1 Subsidiary) will cease to be members of the same controlled group as defined in Section 267(f)(1) upon the consummation of the Distribution (i.e., (i) Distributing will not own more than 50 percent of the total voting power or value of all classes of stock of Controlled (or any of its direct or indirect subsidiaries, including Newco, "new" Sub 1, and any "new" Sub 1 Subsidiary, and (ii) five or fewer individuals, trusts or estates will not own more than 50 percent of the total voting power or value of all classes of stock of Distributing and Controlled (or any of its direct or indirect subsidiaries, including Newco, "new" Sub 1, and any "new" Sub 1 Subsidiary)).
- q) The third party purchaser(s) of the Newco Preferred will not cause Distributing and any of its direct or indirect subsidiaries, on the one hand, and Controlled and any of its direct or indirect subsidiaries (including Newco, "new" Sub 1, and the "new" Sub 1 Subsidiaries), on the other hand, to be members of the same controlled group as defined in Section 267(f)(1) if that section was amended by substituting "20 percent" for "50 percent" following the Distribution (i.e., 5 or fewer individuals, trusts or estates that hold Newco Preferred will not own more than 20 percent of the total combined voting power or value of all classes of stock of Distributing and any of its direct or indirect subsidiaries, on the one hand, and Controlled and any of its direct or indirect subsidiaries (including Newco, "new" Sub 1, and the "new" Sub 1 Subsidiaries), on the other hand).

- r) Immediately after the Proposed Transactions, no holder of Distributing common stock (or Controlled common stock or Newco stock immediately following the Distribution) will own, within the meaning of Section 318, 20 percent or more of the Distributing common stock (or the Controlled common stock or the Newco stock (other than Controlled in the case of Newco stock)).
- s) For purposes of Reg. § 1.197-2(h)(6)(iv)(A)(2), immediately after the Proposed Transactions, (i) the beneficial ownership interest of Distributing in the stock of each of Controlled and Newco will represent less than 10 percent of the total combined voting power of all classes of stock of Controlled and Newco entitled to vote and less than 10 percent of the total value of the shares of all classes of stock of Controlled and Newco outstanding, and (ii) the beneficial ownership interest of each of Controlled and Newco in stock of Distributing will represent less than 10 percent of the total combined voting power of all classes of stock of Distributing entitled to vote and less than 10 percent of the total value of the shares of all classes of stock of Distributing outstanding.
- t) The Distribution is not being engaged in or structured with a principal purpose to avoid the provisions of Section 267(f) (including, for example, by avoiding treatment as an intercompany sale or by distorting the timing of losses or deductions) within the meaning of Reg. § 1.267(f)-1(h).
- u) The acquisition of intangible assets of Sub 1 and any Sub 1 Subsidiary, pursuant to the Section 338(h)(10) Election in the Proposed Transactions is not being undertaken to avoid the operation of the anti-churning rules of Section 197(f)(9) and Reg. § 1.197-2(h)(11).
- v) Immediately after the series of related transactions including the Distribution, Controlled and any of its direct or indirect subsidiaries (including Newco, “new” Sub 1, and the “new” Sub 1 Subsidiaries) will cease to be members of the Distributing Consolidated Group for purposes of applying Reg. § 1.1502-13(d)(1)(ii)(A)(1).
- w) Immediately after the series of related transactions including the Distribution, Controlled and any of its direct or indirect subsidiaries (including Newco, “new” Sub 1, and the “new” Sub 1 Subsidiaries) will not be related to the Distributing Consolidated Group as defined in Section 1239(b) and (c).
- x) Except for the deemed sales of assets of “old” Sub 1 to “new” Sub 1 and from any “old” Sub 1 Subsidiary to any “new” Sub 1 Subsidiary pursuant to the Section 338(h)(10) Election, and except for Distributing’s contribution of the Newco Common and the Sub 1 Distributed Assets to Controlled in the Contribution, the deemed liquidations of “old” Sub 1 and any “old” Sub 1 Subsidiary pursuant to the Section 338(h)(10) Election will not be preceded or followed by the reincorporation in, or transfer or sale to, a recipient corporation (“Recipient”) of any of the

businesses or assets of “old” Sub 1 or any “old” Sub 1 Subsidiary, if persons holding, directly or indirectly, more than 20 percent in value of the “old” Sub 1 or “old” Sub 1 Subsidiary stock also hold, directly or indirectly, more than 20 percent in value of the stock in Recipient. For purposes of this representation, ownership will be determined by application of the constructive ownership rules of Section 318(a), as modified by Section 304(c)(3).

- y) The business purposes for the Rabbi Trust Retention are to reflect the diminution of value of the shares of Distributing stock held by the Rabbi Trust otherwise resulting from the Distribution and to support Distributing's existing deferred compensation payment obligations.
- z) No director or officer of Distributing will serve as a director or officer of Controlled as long as Distributing retains either the Rabbi Trust Retained Controlled Stock or the Additional Retained Controlled Stock.
- aa) The Rabbi Trust Retained Controlled Stock, if any, will be disposed of pursuant to the terms of the Rabbi Trust and the underlying deferred compensation plan and the business purposes for the Rabbi Trust Retention, in any event, as to each participant in the deferred compensation plan, no later than the termination of the deferral period in respect of that participant under the deferred compensation plan.
- bb) The Rabbi Trust will vote the Rabbi Trust Retained Controlled Stock, if any, in proportion to the votes cast by Controlled's other stockholders and will grant Controlled a proxy with respect to the Rabbi Trust Retained Controlled Stock requiring such manner of voting.
- cc) The Rabbi Trust is a grantor trust under Section 671.
- dd) Provided that the Service rules that the conversion of Distributing Stock Options and Distributing RSUs into Controlled Stock Options and Controlled RSUs and the issuance of Controlled stock pursuant to such Controlled Stock Options and Controlled RSUs will be disregarded in determining whether the Distribution satisfies the requirements of Section 355(a)(1)(D), in no event will the Rabbi Trust Retention, the Additional Retention, and the distribution of Controlled Restricted Stock with respect to Distributing Restricted Stock in the Distribution or the issuance of Controlled Restricted Stock in replacement of a portion of the Distributing Restricted Stock in connection with the Distribution prevent Distributing from distributing stock of Controlled that represents control under Section 368(c).
- ee) The business purpose for the Additional Retention is to preserve and enhance Distributing's financial strength and flexibility, including maintaining its credit rating and increasing its liquidity and financial resources available to fund the payment

of debt or other obligations, working capital, expansions, acquisitions, or other initiatives.

- ff) Distributing currently intends that the Additional Retained Controlled Stock will be disposed of in the open market, in privately negotiated transactions, or otherwise, or a combination of the foregoing, as soon as a disposition is warranted consistent with the business purpose for the Additional Retention. In any event Distributing will dispose of all Additional Retained Controlled Stock no later than five years after the Distribution.
- gg) Distributing will vote the Additional Retained Controlled Stock in proportion to the votes cast by Controlled's other stockholders and will grant Controlled a proxy with respect to such Additional Retained Controlled Stock requiring such manner of voting.
- hh) The Distributing Equity Incentive Interests existing at the time of the Distribution will constitute bona fide compensatory arrangements under which Distributing Stock Options, Distributing Restricted Stock, and Distributing RSUs were awarded to employees, non-employee directors, or independent contractors in connection with such person's performance of services to Distributing, Controlled, or a related entity.

Rulings

Based solely upon the information submitted and the representations made, we rule as follows on the Proposed Transactions:

1. The Sub 1 Purchase, followed by the pre-arranged Preferred Sale, will be treated as a sale of the stock of Sub 1 to Newco pursuant to which gain or loss is recognized (Section 1001(a) and Revenue Ruling 79-70, 1979-1 C.B. 144).
2. Assuming completion of the Proposed Transactions, Newco's acquisition of the Sub 1 stock from Distributing pursuant to the Sub 1 Purchase will be a "qualified stock purchase" within the meaning of Section 338(d)(3).
3. Assuming completion of the Proposed Transactions, Distributing and Newco will be eligible to make the Section 338(h)(10) Election with respect to Newco's acquisition of the Sub 1 stock pursuant to the Sub 1 Purchase.
4. Assuming an election under section 338(h)(10) is effected with respect to Sub 1, a Section 338(h)(10) Election can be made for any of the Sub 1 Subsidiaries, so long as an election under Section 338(h)(10) is made for each higher-tier corporation in the same chain of corporations as the Sub 1 Subsidiaries.

5. Assuming an election under section 338(h)(10) is made with respect to Sub 1 (and any of the Sub 1 Subsidiaries), the Distributing Consolidated Group will take into account, immediately before the Distribution, any losses recognized pursuant to the deemed sale resulting from the Section 338(h)(10) Election (Section 267(f)(2)(B) and Reg. § 1.267(f)-1(c)).
6. Assuming an election under section 338(h)(10) is made with respect to Sub 1 (and any of the Sub 1 Subsidiaries), any goodwill, going concern value and other "Section 197 intangibles" of Sub 1 or any Sub 1 Subsidiary for which amortization would not have been allowable but for Section 197 will not be subject to the anti-churning rules of Section 197(f)(9) and will constitute "amortizable Section 197 intangibles" (Reg. § 1.197-2(h)(6)).
7. Gain recognized by Sub 1 or any Sub 1 Subsidiary on the deemed sale of its depreciable and amortizable property pursuant to the Section 338(h)(10) Election will not be recharacterized as ordinary income under Section 1239. See Reg. § 1.1502-13(d)(1)(ii)(A)(1).
8. The distributions of the Sub 1 Distributed Assets in Step 5 will be treated as distributions pursuant to the deemed liquidations of Sub 1 and the Sub 1 Subsidiaries (Reg. § 1.338(h)(10)-1(d)(4)). The distribution of the Sub 2 Assets (and, if distributed, the Sub 6 Asset) in Step 6 will be treated as distributions under Section 301 of the Code and Reg. § 1.1502-13(f)(2).
9. Neither the deemed sales of assets of "old" Sub 1 to "new" Sub 1 and from any "old" Sub 1 Subsidiary to any "new" Sub 1 Subsidiary pursuant to the Section 338(h)(10) Election nor Distributing's contribution of the Newco Common and the Sub 1 Distributed Assets to Controlled will preclude the deemed liquidation of "old" Sub 1 or any "old" Sub 1 Subsidiary pursuant to the Section 338(h)(10) Election from qualifying as a complete liquidation under Section 332.
10. Neither the Sub 1 Purchase nor the Section 338(h)(10) Election will preclude the Distribution from satisfying the active trade or business requirement of Section 355(b).
11. Neither the Section 338(h)(10) Election, the Newco Preferred, the Rabbi Trust Retention, the Additional Retention, nor any of Steps 2, 3, 4, 5, 6, 7, and 8 of the Proposed Transactions (separately or together) will preclude the Distribution from satisfying the requirements of Section 355 or Section 368(a)(1)(D).
12. The Transition Services Agreement will not preclude the Distribution from satisfying the active trade or business requirement of Section 355(b).
13. The Distribution will satisfy the requirement set forth in Section 355(a)(1)(D). The Rabbi Trust Retention of the Rabbi Trust Retained Controlled Stock and the

Additional Retention of the Additional Retained Controlled Stock will not be in pursuance of a plan having as one of its principal purposes the avoidance of U.S. federal income tax within the meaning of Section 355(a)(1)(D)(ii). The conversion of Distributing Stock Options and Distributing RSUs into Controlled Stock Options and Controlled RSUs in the Distribution and the later issuance of Controlled stock pursuant to such Controlled Stock Options and Controlled RSUs will be disregarded in determining whether the Distribution satisfies the requirements of Section 355(a)(1)(D).

14. The Cash Proceeds will be treated as being distributed pursuant to a plan of reorganization for purposes of Section 361(b)(1)(A) and (b)(3). Reg. § 1.368-2(g).

Caveat

No opinion is expressed or implied about the federal income tax consequences of any other aspect of any transaction or item discussed or referenced in this letter, or the federal income tax treatment of any conditions existing at the time of, or effects resulting from, the Proposed Transactions that are not specifically covered by the above ruling.

Procedural Statements

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of this letter ruling.

In accordance with the power of attorney on file with this office, a copy of this ruling letter will be sent to your authorized representatives.

Sincerely,

Gerald B. Fleming
Senior Technician Reviewer, Branch 2
Office of Associate Chief Counsel (Corporate)